

Larry E. Craig, Chairman
Jade West, Staff Director

Conference Report Highlights

June 14, 2000

Highlights of the Conference Report to Accompany S. 761, Electronic Signatures in Global and National Commerce Act

H. Rept. 106-661

Noteworthy

- The House today passed the conference report to accompany S. 761 by a vote of 426-4. The Senate is expected to take it up shortly.
- On November 9, 1999, the House passed H.R. 1714 by a vote of 256-66 and the Senate passed its version, the Third Millennium Digital Commerce Act, on November 19, 1999 by voice vote.
- After months of negotiations among lawmakers and the Administration on such issues as consumer protection and consumer consent language, the conferees reported a compromise measure on June 8, 2000. The President has indicated that he will sign the bill [see White House statement reprinted on p. 3 of this Highlights paper].
- S. 761 sets national standards for electronic signatures and records and provides them the same legal validity as written contracts and documents, giving businesses and consumers greater confidence in electronic transactions, and allowing for continued growth in this rapidly expanding commercial arena.

Background

Electronic signatures can contribute to paperless commerce by allowing companies and individuals to transact business electronically rather than physically. Technology allows electronic signatures to serve as a secure means of authenticating the originator's identity and verifying that an electronic document has not been subsequently altered. Despite the technology, a great barrier to the growth of Internet commerce has been the lack of consistent, national rules governing the use of electronic signatures. While most of the states have enacted electronic

authentication laws, the laws have been inconsistent, thus deterring businesses and consumers from using electronic signature technologies to authorize contracts or transactions.

In July of last year, the National Conference of Commissioners on Uniform State Law (NCCUSL) reported out model legislation designed to unify state law on electronic authentication in a more market-oriented, technology-neutral approach. Passage by all 50 states in a manner consistent with the version reported by NCCUSL will provide the same national uniformity which is established in the federal legislation. For that reason, when a state adopts the "Uniform Electronic Transactions Act" (UETA) as reported by NCCUSL, the federal preemption provided in this bill is superceded. This model is expected to be enacted on a state-by-state basis over the next three to five years.

This legislation has been a priority for lending entities like Fannie Mae and Sallie Mae, and has the support of many other organizations such as the Information Technology Association of America, the Information Technology Industry Council, the National Association of Manufacturers, the U.S. Chamber of Commerce, and several high-technology companies. A typical response to the final version of S. 761 was provided by a spokesman for the American Electronics Association, calling it "a prerequisite to the growth of electronic commerce because it does bring legal certainty to the environment."

Highlights

S. 761 is anticipated to significantly boost electronic commerce. With the legal protection it offers electronic transactions, consumers may obtain loans (including for real property), open brokerage accounts, and sign contracts without any exchange of paper. It would also provide a way for banks and insurers to notify consumers of late payments or changes in credit card or loan contracts via e-mail rather than postal mail, and it would allow financial institutions to begin keeping more records electronically.

- S. 761 will provide equivalent legal validity to electronic signatures as to handwritten signatures, and to electronic records as to paper records.
- The measure sets national standards for electronic signatures and records and ensures that consumers in the electronic arena retain the same rights they currently have in the paper arena.
- In order to ensure nationwide uniformity, the legislation requires state laws to be consistent with provisions of S. 761. This federal preemption of state law may be superceded by a state upon that state's enactment of the "Uniform Electronic Transactions Act" (UETA). Federal and state regulatory agencies are provided limited authority to interpret this Act with respect to existing statutes.

- Consumers must agree to enter into electronic transactions and affirmatively consent to receive electronic records, assuring that people without computers or those that prefer paper transactions retain that option. The consumer consent provision allows for flexibility so that a wide variety of technologies or business models may be used to determine a consumer's ability to access the electronic records. The bill simply requires a reasonable demonstration that a consumer can access the information in electronic form. However, the bill also makes clear that the legal effectiveness of the underlying contract shall not be denied solely because of a failure to obtain consent to electronic records in accordance with this statute.
- A number of records will remain under the jurisdiction of the states, including those related to wills, adoption, and divorce. Further, certain notices are exempted from electronic equivalency, including court orders, cancellation of water or other utility, and cancellation of health or life insurance — that is, such notices still would be required to be sent in paper form. However, the Secretary of Commerce is to evaluate the specific exceptions over three years, and report back to Congress. Further, a federal agency has limited authority to lift exceptions within its jurisdiction which it finds unnecessary to protecting consumers.
- The Secretary of Commerce is directed to promote the use and acceptance, on an international basis, of electronic signatures and records, encouraging the elimination of paper-based obstacles, and the adoption of a technology-neutral, market-based, non-discriminatory approach to electronic authentication technology. Also, the Secretary is directed to eliminate or reduce barriers to commerce in electronic signatures in the facilitation of interstate and foreign commerce development.
- The effective date for most of the provisions in this Act will be October 1, 2000, and the record-retention provision becomes effective March 1, 2001.

White House Statement

[From the White House Office of the Press Secretary]

For Immediate Release June 8, 2000

I am pleased that House and Senate conferees have reached bipartisan agreement on important electronic commerce legislation, the "Electronic Signatures in Global and National Commerce Act." This legislation will remove legal barriers to doing business on-line while preserving consumer protections. Congress should quickly send the bill to my desk. E-commerce offers substantial benefits for businesses and consumers in terms of efficiency, convenience, and lower costs and is a vital source of dynamism for the American economy. If we are to achieve the full potential of electronic business-to-business and business-to-consumer

commerce, however, some minimal ground rules are necessary. Business needs legal certainty that a contract formed and executed on-line will be no less valid than its pen and ink counterpart. Consumers need confidence that they are as safe doing business in the electronic world as they are on paper. The bipartisan agreement reached by conferees is a responsible and balanced approach to accomplishing both of these goals. The legislation would remove barriers to E-commerce by establishing technology-neutral legal standards for electronic contracts and signatures. It would ensure that consumer protections on-line will be equivalent to those in the paper world. I applaud the leadership of Chairmen Bliley and McCain who reached across party lines and built a bipartisan consensus. I am also grateful to the Democrats who worked so constructively to reach bipartisan agreement in conference, including Senators Hollings, Leahy, Sarbanes, and Wyden and Congressmen Dingell and Markey.

Staff contact: Judy Myers, 224-2946